

1 Anna S. McLean (Bar No. 142233)
2 Nathaniel R. Spencer-Mork (Bar No. 226886)
3 HELLER EHRMAN LLP
333 Bush Street
San Francisco, CA 94104-2878
4 Telephone: +1.415.772.6000
Facsimile: +1.415.772.6268
5 Anna.McLean@hellerehrman.com
Nate.SpencerMork@hellerehrman.com

6 John C. Ulin (No. 165524)
7 HELLER EHRMAN LLP
333 South Hope Street, 39th Floor
8 Los Angeles, CA 90071
Telephone: (213) 689-0200
9 Facsimile: (213) 614-1868
John.Ulin@hellerehrman.com

10 Attorneys for Plaintiff
11 PHILIP MORRIS USA INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 PHILIP MORRIS USA INC.,
16 Plaintiff,
17 v.
18 IKRAM KHAN, *et al.*,
19 Defendants.
20
21
22
23
24
25
26
27
28

Case No: 3:06-CV-4167 MMC

**~~[PROPOSED]~~ ORDER FOR
DEFAULT JUDGMENT AS TO
DEFENDANTS ISADORA
BERNAL AND LEULI MARLENE
ULLOA BERNAL, EACH
INDIVIDUALLY AND DOING
BUSINESS AS WATSONVILLE
MARKET #2**

F.R.C.P. 55(b)]

[Filed Concurrently With Application for
Default Judgment; Memorandum of
Points and Authorities; and Declaration
of Counsel of Philip Morris USA Inc.]

Hearing Date: February 9, 2007
Time: 9:00 a.m.
Courtroom: 3

The Honorable Maxine M. Chesney

Philip Morris USA Inc. (“Philip Morris USA” or “Plaintiff”), having properly served a Summons and Complaint upon Isadora Bernal and Leuli Ulloa Marlene Bernal, each individually and doing business as Watsonville Market #2, a/k/a Juanitos Supermercado (hereinafter “Defendants”), and Defendants having failed to timely respond to Complaint, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

1. This is an action for: (i) infringement of registered trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114; (ii) false designation of origin and trademark and trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and (iii) unfair competition and trademark infringement in violation of the common law of the State of California. This Court has personal jurisdiction over Philip Morris USA and Defendants, and subject matter jurisdiction of the matters in controversy between Philip Morris USA and Defendants. Venue in this judicial district is proper.

2. Defendants have not made any objections regarding the sufficiency of process or the sufficiency of service of process in this section. Any objections Defendants may have regarding the sufficiency of process or the sufficiency of service of process in these actions are hereby deemed waived.

3. Philip Morris USA manufactures cigarettes, including the famous MARLBORO® brand, for sale in the United States. Philip Morris USA is the registered owner of the following MARLBORO® and MARLBORO®-related trademarks on the Principal Register of the United States Patent and Trademark Office, all of which are valid, subsisting and incontestable pursuant to 15 U.S.C. § 1065 (collectively “Philip Morris USA Marks”):

Registration Number	Registration Date	Trademark
68,502	April 14, 1908	MARLBORO®
938,510	July 25, 1972	MARLBORO Red Label®

1 4. Philip Morris USA has spent substantial time, effort, and money advertising
2 and promoting the Philip Morris USA Marks throughout the United States, and these marks
3 have consequently developed significant goodwill, have become distinctive, and have
4 acquired secondary meaning. As a result of the sale of counterfeit MARLBORO®
5 cigarettes, Philip Morris USA is suffering a loss of the enormous goodwill associated with
6 the Philip Morris USA Marks, and is losing profits from lost sales of genuine products.

7 5. Beginning on or about June 7, 2005, and subsequent to Philip Morris USA's
8 adoption and first use of the Philip Morris USA Marks, Defendants offered for sale and sold
9 to the general public counterfeit MARLBORO® brand cigarettes.

10 6. Philip Morris USA filed the Complaint in this matter on July 5, 2006.

11 7. Defendants were served with Summons and Complaint on July 12, 2006.

12 8. Entry of Default was recorded against Defendants due to their failure to
13 answer or otherwise respond to the Complaint. On January 3, 2007, Plaintiff presented this
14 Court with its Application for Default Judgment against Defendants.

15 9. Accordingly, it is hereby **ORDERED** that Defendants, and their officers,
16 agents, servants, employees, and attorneys, and all persons in active concert or participation
17 with them, are hereby **PERMANENTLY ENJOINED** from:

- 18 (i) purchasing, selling, offering for sale, or otherwise using in commerce any
19 counterfeit MARLBORO® and/or MARLBORO LIGHTS® brand cigarettes; and
20 (ii) assisting, aiding or abetting any other person or entity in purchasing, selling,
21 offering for sale, or otherwise using in commerce any counterfeit MARLBORO®
22 and/or MARLBORO LIGHTS® brand cigarettes.

23 10. **IT IS FURTHER ORDERED THAT**, pursuant to 15 U.S.C. § 1117(c),
24 Defendants are liable to Plaintiff in the amount of \$10,000 for violations of Sections 32 and
25 43(a) of the Lanham Act.

26 11. **IT IS FURTHER ORDERED THAT**, pursuant to 15 U.S.C. § 1117(a)(3),
27 Defendants are liable to Plaintiff in the amount of \$440.00 for costs incurred in bringing this
28 action against Defendants.


1 12. The terms of this Judgment and Permanent Injunction shall be enforceable
2 against Defendants, their successors in interest and assigns, and any persons or business
3 entities working in concert with Defendants.

4 13. There being no just reason for delay, the entry of this Default Judgment by the
5 United States District Court constitutes entry of final judgment as to all claims asserted in
6 this action by Philip Morris USA against Defendants pursuant to Federal Rule of Civil
7 Procedure 54(b).

8 14. The court shall retain jurisdiction to enforce this Default Judgment and
9 Permanent Injunction.

10
11 **IT IS SO ORDERED.**

12
13 DATED: January 29, 2007



The Honorable Maxine M. Chesney
United States District Judge